Court of Appeals, Division II
Oral Argument Summaries
Hearing of March 22, 2007

Location: St. Martin's University
Panel: Jj. Armstrong, Hunt, Penoyar

8:00 AM

344475 **Thurston County**
State of Washington, Respondent v James D. Radcliffe, Appellant

Litigants:	**Attorney of Record:**
Radcliffe, James Daniel (Appellant)	Peter B. Tiller
State of Washington (Respondent)	James C. Powers

Nature of Action:
Radcliff appeals his criminal convictions following a jury trial for two counts of third degree child rape and one count of indecent liberties with forcible compulsion.

Factual Summary:
The police arrested Radcliff following disclosures of sexual abuse by his girlfriend's 15-year old daughter. One detective read Radcliff his Miranda rights but another took over the questioning without again reading Radcliff his rights. When the detective confronted Radcliff with some evidence against him, Radcliff mentioned wanting an attorney. The detective continued the questioning.

During voir dire, one potential juror stated in front of the other potential jurors that he had seen Radcliff in "situations" in the bar the juror worked in that might affect how the juror weighed Radcliff's testimony. This juror was excused for cause.

The jury submitted a question to the court about the phrase "forcible compulsion." The court answered the question, altering the phrasing that had been used in the original jury instruction.

During sentencing, the judge refused to grant Radcliffe a Special Sex Offender Sentencing Alternative (SSOSA).

Issues:
1. Did the trial court abuse its discretion in finding that the prospective juror's comments about having seen Radcliffe in a bar and that he could not render a fair verdict did not taint the jury pool?

2. Was Radcliffe's request for an attorney sufficiently unequivocal to make his statements to the detective inadmissible as *Miranda* violations?

3. Did the trial court correctly instruct the jury on the meaning of the phrase "forcible compulsion?

349124 **Grays Harbor County**
State of Washington, Respondent v Joseph Harold Steen, Appellant

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Litigants:	**Attorney of Record:**
Steen, Joseph Harold (Appellant)	Manek R. Mistry Jodi R. Backlund
State Of Washington (Respondent)	Gerald R. Fuller

Nature of Action:
Joseph Steen appeals his conviction for indecent exposure.

Factual Summary:
Diane Earl testified that through an open window in her apartment she saw Steen standing in yard immediately below her apartment building. She testified that Steen looked up at her, pulled down his pants, and exposed himself. Earl called police and they arrested Steen. In a search incident to the arrest, the police found a small quantity of methamphetamine. The information alleged that Steen had previously been convicted of Voyeurism.

Issues:
1. Is the indecent exposure statute unconstitutionally vague because it fails to define the term "obscene"?

2. Is the indecent exposure statute unconstitutionally vague because the undefined phrase "open and obscene" is too subjective to allow ordinary people to understand what conduct is proscribed?

3. Is the indecent exposure statute unconstitutionally vague because the undefined phrase "open and obscene" is too subjective to provide ascertainable standards of guilt to protect against arbitrary enforcement?

4. Does the indecent exposure violate the due process clause of the 14th amendment?

5. Was the information deficient because it failed to notify Steen that the prosecution planned to seek an enhanced sentence?

6. Did the trial err when it imposed an exceptional sentence?

Issues Raised in Defendant's Statement of Additional Grounds
1. Was Steen's right to effective assistance of counsel violated when his trial attorney brought up his past conviction?
2. Was Steen's right to effective assistance of counsel violated when his trial attorney failed to inform the jury that Steen's pants were seized, sent to the crime lab for analysis, and came back clean?
3. Did the prosecutor improperly state that Steen had been charged and convicted of indecent liberties?

4. Was Steen's right to effective assistance of counsel violated when his trial attorney failed to move to have Steen's case held before a different judge?

9:30 AM

342081 (Consolidated with 351803) Thurston County
State of Washington, Respondent v Joshua M. Ice, Appellant

Litigants:	**Attorney of Record:**
Ice, Joshua M. (Appellant)	Thomas Edward Doyle
Ice, Joshua M. (Petitioner)	(Pro Se)
State of Washington (Respondent)	James C. Powers

Nature of Action:
Appeal from convictions by guilty pleas to charges of vehicular homicide and vehicular assault.

Factual Summary:
Ice drove his vehicle at approximately 70 miles per hour in a 50 miles per hour zone while proceeding through a series of "S" curves on a two-lane road. He lost control in a curve and collided head-on with an oncoming car. The other driver suffered blunt force trauma to her chest and abdomen, a laceration on her knee, whiplash, bruised lungs, and bruises to her body. Ice's passenger, Stephanie White, died from injuries sustained in the collision.

On October 25, 2004, the State charged Ice with one count of vehicular homicide and one count of vehicular assault, issuing a Certification of Probable Cause to support the Information. The State amended the Information on October 28, to change Ice's address. On July 22, 2005, the State filed a Second Amended Information adding an alternative method of committing vehicular assault: Ice drove his car in a reckless manner and caused substantial bodily harm to another and/or drove his vehicle with disregard for the safety of others and caused substantial bodily harm to another.

Ice pleaded guilty to the charges and stipulated to using the certificate of probable cause to determine if the facts supported the plea. Ice confirmed that he reviewed the plea form, the standard range, and the maximum fine. The court accepted the pleas and sentenced Ice to a standard range of 26 months and imposed community custody conditions, which included a requirement that Ice undergo substance abuse evaluation and treatment.

Issues:
1. Did the Third Amended Information provide Ice with notice regarding each of the essential elements of vehicular assault? Did the previously filed Informations cure any defect in the Third Amended Information?

2. Did the trial court err by imposing community custody conditions not related to vehicular assault or vehicular homicide when there was no evidence that Ice’s chemical dependency contributed to the offense?

3. Does newly discovered evidence show that Ice's plea was a manifest injustice entitling him to withdraw his guilty pleas? (Personal Restraint Petition)

4. If the court vehicular assault charge is invalid, is resentencing necessary?

351714 **Cowlitz County**

John Bichler, et al, Appellants v Cowlitz Co., et al, Respondents

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Litigants:	**Attorney of Record:**
Southworth, Marianne (Appellant)	Jeffrey Paul Helsdon
Bichler, John (Appellant)	Jeffrey Paul Helsdon
Ryderwood Improvement and Services Association, Inc. (Respondent Intervenor)	Francis Fitz Randolph
Cowlitz County (Respondent)	Ronald S. Marshall

Nature of Action:
Bichler and Southworth appeal the ruling of the Cowlitz County Superior Court dismissing their Land Use Petition (LUPA petition) filed under Chapter 36.70C RCW on the basis of lack of jurisdiction.

Factual Summary:

Bichler purchased property from Gabriel Goro under a real estate contract and still owed money on the contract at the time of the land use hearing. The hearing examiner who originally assessed the permit application identified Goro as the propery owner.

The trial court dismissed the LUPA petition because it found that under RCW 36.70C.040, Bichler had to serve Goro because the hearing examiner had identified him as the property owner. Absent service on Goro, the trial court found that it did not have jurisdiction to address the petition. The trial court found also dismissed on the dditional ground that Goro was the taxpayer of record.

Issues:
1. Did the trial court err when it ruled that a real estate contract vendor is an indispensable party under RCW 36.70C.040(2)(b)?

2. Did the trial court err in dismissing Bichler's Land Use Petition Act (LUPA) petition on the basis of subject matter jurisdiction when Bichler and Cowlitz County had waived the alleged defect of failure to join necessary persons?

3. Did the waiver by Cowlitz County waive the defense on behalf of co-respondent Ryderwood Improvement and Services Association, Inc (RISA) where RISA did not intervene until after Cowlitz County signed the waiver?

4. Did the trial court err in dismissing Bichler's LUPA petition on the basis that the real estate contract vendor was the taxpayer of record?

11:00 AM

346681 **Cowlitz County**
State of Washington, Respondent v Leif E. Cole, Appellant

Litigants:	**Attorney of Record:**
Cole, Leif (Appellant)	Lisa Elizabeth Tabbut
State of Washington (Respondent)	Susan Irene Baur

Nature of Action:
Leif Eric Cole appeals his conviction for violating a no contact order. He argues warrantless arrest and that the State's downstream evidence was inadmissible. He also argues insufficiency of the evidence.

Factual Summary:

Cole was a passenger in a vehicle driven by Stacy Welker. Officer Brent Murray watched Cole and Welker walk through the parking lot of a recently burglarized church. Murray mistakenly identified Welker as another woman whom he had previously arrested and who was known to commit burglaries. Murray also believed that the vehicle Cole and Welker got into was "a little bit too nice for [the other woman]."

He followed them and discovered that the vehicle's license plate was partially obscured. Although he could not confirm it, Murray suspected the vehicle was stolen and believed that a known burglar was inside. He stopped it.

When both of his suspicions proved untrue, Murray questioned Cole and Welker. They said they had walked through the church parking lot from another woman's home; Murray knew her as a drug user. His focus then became Cole and Welker, and he did not investigate the activity at the church any further. A records check showed that a no contact order prohibited Cole from associating with WelkerMurray arrested Cole.

At trial, Cole moved to suppress, alleging the stop lacked a *Terry v. Ohio* predicate. Murray testified he would have stopped the vehicle even if its license plate had been fully visible. He did not however cite Welker for the obstructed license plate. The trial court entered a finding that Murray stopped the vehicle because of the vehicle's obstructed plate and because of his numerous other concerns about its occupants. Cole was convicted.

Issues:
1. Is there substantial evidence in the record to support the trial court's findings of fact?

    a. Must evidence be introduced of the criminal convictions of the third-party who drew Officer's Murray's suspicion in the first instance?

    b. Is there sufficient evidence to support the finding that Murray stopped the vehicle because of its obstructed license plate?

    c. Is there sufficient evidence to support the finding that Murray was suspicious of Cole presence at the church?

2. Did Murray have a proper *Terry* predicate to stop Cole and Welker?

a. Was Cole seized when Murray stopped the vehicle?
b. If not, was he seized when Officer Murray asked him his name?
c. Did Murray have a reasonable suspicion regarding events at the church?
d. Did Murray reasonably suspect the vehicle was stolen?
e. Do the totality of the circumstances otherwise support the stop?

1:30 AM

351447 **Thurston County**
Joyce M. Tasker, Appellant v. Dept. of Health, State of WA, Respondent

Litigants:	**Attorney of Record:**
Tasker, Joyce M. (Appellant)	(Pro Se) Waived Oral Argument
Dept. of Health, State of WA (Respondent)	Richard Arthur McCartan

Nature of Action:
Appeal from order affirming the Department of Health's determination that Joyce Tasker engaged in the unlawful practice of medicine and veterinary medicine and had lawfully imposed a cease and desist order.

Factual Summary:
In June 2003, the Department of Health received a complaint from an Oklahoma physician that Tasker was engaged in the unlawful practice of medicine without a license based on her website indicating that she was offering electrodermal testing (EDT). She offered this service to both humans and animals. The Department's investigation culminated in it issuing a cease and desist order in March 2005 and imposing a $10,000 fine for egregious violations. The superior court affirmed the Department decision.

Tasker solicited in person contact or in having customers send blood or saliva testing for EDT testing. She charged $150 for this service. According to her depositions, Tasker tested for electromagnetic energies, identifying electromagnetic signatures. These signatures may identify potential tumors, diseases, or other conditions. She offered to sell various remedies or "tinctures" to improve her clients' health. .

Issues:
1. Did the Department misinterpret RCW 18.120.010, which limits enforcement to practices that endanger public health?

2. Does substantial evidence in the record support the Department's findings of fact?

3. Did the Department fail to provide adequate notice?

4. Did the Department fail to consider WAC 296-21-280, which allows unlicensed, non-physicians to use biofeedback tools to treat disease?

5. Does federal preemption bar the Department's actions in this case?

6. Did the Department lack jurisdiction over Tasker since she practiced on tribal land?

7. Did the Department violate Tasker's first amendment rights by regulating truthful statements she posted on her website?

8. Is this entire action a bad faith prosecution pushed by the American Medical Association and the Washington State Medical Association, whose special interest is in eradicating alternatives to conventional medicine?